IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Ramkishore @ Kishore & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.1212/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 27-8-2002 in Sessions Case No.13/2002 passed by Shri Ram Charan Meena, RHJS, Additional Sessions Judge (Fast Track) Bandikui District Dausa.

Date of Judgment: April 09, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Biri Singh Sinsinwar] for appellants.
Mr. Kamlendra Sihag]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

In this appeal the appellants, six in number, have impugned the judgment dated August 27, 2002 of the learned Additional Sessions Judge (Fast Track) Bandikui District Dausa whereby the appellants were convicted and sentenced as under:-

Ram Kishore @ Kishore, Kishan Lal, Ramji Lal, Jagdish and Ramniwas:
U/s.302/149 IPC:
Each to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for one month.

U/s.148 IPC:
Each to suffer rigorous imprisonment for one year and fine of

Rs.500/-, in default to further suffer simple imprisonment for one month.

U/s.323 IPC:

Each to suffer simple imprisonment for one month and fine of Rs.100/-, in default to further suffer simple imprisonment for five days.

Ganga Sahai:

U/s.302 IPC:

To suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for one month.

U/s.148 IPC:

To suffer rigorous imprisonment for one year and fine of Rs.500/-, in default to further suffer simple imprisonment for one month.

The substantive sentences were ordered to run concurrently.

2. The prosecution case is as under:-

On November 3, 1999 Police Station Kolwa recorded parcha bayan (Ex.P-1) of injured Surjan Singh (Pw.2), wherein he stated that on November 2, 1999 in evening around 6 PM while he was going to village Khanpur from his house, he was wayled by Kishore, Jagdish, Kishan Lal, Ramniwas and Ramjilal. Kishore inflicted Barchhi-blow on his head as a result of which he fell down. When Avtar and Ganga Bishan intervened they were also beaten up. Ganga Sahai gave axe-blow on the head of Ganga Bishan. On the basis of parcha bayan case under sections 147, 148, 149, 323, 324 and 307 IPC was registered and investigation commenced. In the course of investigation Ganga Bishan succumbed to his injuries and section 302 IPC was added. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Bandikui District Dausa. Charges under sections 148,

323, 325/149, 307, 302 and 302/149 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 21 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. Five witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard the submissions and weighed the material on record. Death of Ganga Bishan was indisputably homicidal in nature. Vide Post Mortem Report (Ex.P-45) following ante mortem injuries were found on the dead body:-

1. Multiple abrasion varying in size 2 x 1 to ½ x ¼ cm on left side back of chest
2. Multiple abrasions of size ¼ x ¼ to ¼ x 1/6cm on Rt.infra scapular region.
3. Lacerated wound 6cm x 1cm x skin deep with soft scab seen on Rt.side of sternum.
4. Lacerated wound 3cm x ½ cm x skin deep on area 2cm lateral to it on sternum with soft scab.
5. Stitched wound 8cm long having 7stitches on area Lt.to mid parietal line. On dissection sub scab hematoma seen all over except occipital further.
Skull shows multiple communited fracture & depressed fracture on fronto parietal area as front.

In the opinion of Dr. Vivekanand Goswami (Pw.21) the cause of death was coma due to injuries to brain and skull.

4. It appears from the record that members of the accused party viz. Ram Niwas, Rameshwar and Ram Kishore also received injuries in the said incident. Their injury reports Ex.D-9, Ex.D-10 and Ex.D-11 have been

placed on record. Accused Ram Kishore lodged FIR Ex.D-8 against the complainant party.

5. The prosecution examined Surjan @ Suraj Mal (Pw.2) and Ramavtar @ Avtar (Pw.8) as eye witnesses of the occurrence. Surjan in his cross examination deposed that he submitted written report of the incident at Police Chowki Dubbi. The report was however not placed on record. Having closely scrutinised the testimony of Surjan and Ramavtar we notice that complainant party and accused party had a dispute in regard to path way and both the parties freely fought all of a sudden and accused appellants suffered injuries on vital parts of the body, but the prosecution failed to give any explanation of such injuries. This fact situation gives rise to the inference that the prosecution is guilty of suppressing the genesis and the origin of the occurrence and thus not presented the true version.

6. Their Lordships of Supreme Court in Subramani Vs. State of T.N. in regard to non explanation of injuries sustained by the accused indicated as under:-

> "The appellants suffered injuries on vital parts of the body, even though simple but the prosecution failed to give any explanation for such injuries. The prosecution feigned ignorance about the injuries suffered by the appellants. It is not possible to accept the submission that the injuries being simple, the prosecution was not obliged to give any explanation for the same. Having regard to the facts of the case the omission on the part of the prosecution to explain the injuries on the person of the accused may give rise to the inference that the prosecution is guilty of suppressing the genesis and the origin of the occurrence and had thus not presented the true version."

7. In Vajrapu Sambayya Naidu Vs. State of A.P. (supra) the Apex

Court held that where the injuries sustained by the accused were not explained by the prosecution it probabilise the case of defence that the prosecution party was the aggressor.

8. In Chuhar Singh Vs. State of Punjab (AIR 1991 SC 1052), where in the quarrel was between the accused and deceased the accused received injuries during the course of occurrence causing death of deceased by gun shot, the accused could be said to have exceeded his right of private defence and convicted under Section 304 Part I IPC. Their Lordships of Supreme Court observed as under:-

(Para 6)

> "Now the question that arises for our consideration is whether the appellant would be entitled for a complete acquittal on the plea of right of private defence of his person. We have no hesitation in coming to the conclusion that the appellant had exceeded his right of private defence of his body when causing the death of the deceased by using the dangerous weapon, namely, the gun and hence he is not entitled for complete acquittal but would be liable to be convicted under Section 304 Part-I IPC."

9. In Puran Vs. State of Rajasthan (AIR 1976 SC 912) It was indicated that where sudden mutual fight ensued between the parties, there is no question of invoking the aid of Section 149 IPC for the purpose of imposing constructive criminal liability. The accused can be convicted only for the injuries caused by him by his individual acts.

10. In the case on hand as already noticed, there was no prior enmity between the complainant party and accused and incident occurred all of a sudden. In such a situation it could not have been held that the accused formed unlawful assembly and charges under sections 148 and 149 IPC are

not found established. Since the prosecution is guilty of suppressing the genesis and the origin of the occurrence, charge under section 323 IPC is not made out beyond a reasonable doubt.

11. The allegation against appellant Ganga Sahai was that he inflicted he inflicted injuries on the person of deceased who suddenly intervened. The totality of circumstances thus justify the inference that Ganga Sahai did not intend to cause murder of the deceased. At best Ganga Sahai can be said to have caused a bodily injury as is likely to cause death and he can be convicted under section 304 Part I. Therefore, there is every justification to alter the conviction recorded under section 302 into one under Section 304 Part I IPC.

12. For these reasons, we dispose of instant appeal in the following terms:-

(i) We allow the appeal of appellants Ram Kishore @ Kishore, Kishan Lal, Ramji Lal, Jagdish and Ramniwas and acquit them of the charges under sections 148, 323 and 302/149 IPC. These appellants are on bail, they need not surrender and their bail bonds stand discharged.

(ii) We partly allow the appeal of appellant Ganga Sahai and instead of section 302 we convict him under section 304 part I IPC and sentence him to suffer rigorous imprisonment for ten years and fine of Rs.1000/-, in default to further suffer three months rigorous imprisonment. We however acquit the appellant Ganga Sahai of the charge under section 148 IPC.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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